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**Michael P. Childers**  
Chief Executive Officer  
Generation Development

July 2, 2007

Mr. Howard G. Borgstrom, Director  
Business Operations Center  
Office of the Chief Financial Officer  
U.S. Department of Energy, Mailstop CF-60, Room 4A-221  
1000 Independence Avenue, SW  
Washington DC 20585

Re: Comments on the Notice of Proposed Rulemaking Implementing the Energy Loan  
Guarantee Program-Your reference **RIN 1901-AB21**, ***72 Federal Register 27471***  
***(May 16, 2007)***

Dear Mr. Borgstrom:

By way of introduction my name is Michael Childers and I am CEO of TXU Generation Development Company LLC ("TXU Generation Development"), a subsidiary of TXU Corp., located in Dallas, Texas. TXU Corp. is an energy company and manages a portfolio of competitive and regulated energy businesses primarily in Texas. Our generation subsidiary, TXU Power, has more than 18,300 MW of generation in Texas, including 2,300 MW of nuclear and 5,800 MW of coal-fueled generation capacity. TXU subsidiaries are the largest purchasers of wind-generated electricity in Texas and fifth largest in the United States. Further, as part of our announced merger with Texas Energy Future Holdings (TEF), TEF has committed to more than doubling the purchase of wind power to more than 1,500 MW and expanding Demand Side Management programs.

My responsibility is managing the team tasked with developing and constructing new power generation. Our current plans call for the development of up to 3,400 MW of nuclear power at our existing Comanche Peak site. Further we are considering potentially multiple coal-gasification units as well as wind, solar and biomass projects to meet future electric demand growth in Texas.

In this letter I will discuss briefly TXU's point of view concerning energy market fundamentals for the Electric Reliability Council of Texas (ERCOT) region, in which most of TXU Corp.'s subsidiaries operate. TXU Generation Development believes there will be a need for additional generation resources in the next few years and our company is positioning itself to meet some of those needs. As nuclear, coal-gasification and other renewable resources are a large part of our future baseload generation strategy, I will

discuss the urgent need for a workable Loan Guarantee Program to allow these units to be built. And finally, I will provide my detailed comments on the recent Notice of Proposed Rulemaking (NOPR) for the federal loan guarantee program. It is my firm belief that the Loan Guarantee Program envisioned in Title XVII of the Energy Policy Act of 2005 administered by the Department of Energy is an important element to the successful development and construction of new generation capacity.

### **The ERCOT Market**

Demand for power in the ERCOT region is growing steadily. ERCOT's baseload generation requirements are expanding by more than 1,500 MW annually. We are planning to address some of the increased load by constructing three new coal units totaling 2,200 MW to help meet the near-term generation shortfall. In addition, we are planning generation additions in nuclear and coal gasification. Some details of our plans for the latter technologies follow:

For nuclear:

- A. TXU Generation Development, through its NuBuild project, plans to construct two Mitsubishi-designed US-advanced pressurized water reactor (APWR) nuclear generating units at its Comanche Peak site.
- B. Mitsubishi plans to submit to the Nuclear Regulatory Commission (NRC) its design certification document (DCD) at the end of 2007 and TXU Power or an affiliate will follow with its combined operating and construction license application (COLA) to the NRC prior to December 2008.
- C. TXU Power is an extremely capable nuclear plant operator and just finished a world-class 55-day steam generator replacement at Comanche Peak.
- D. TXU Power operates its two-unit Comanche Peak station at industry leading capacity factors and operating cost.
- E. This high level of operating capability is exhibited through TXU Power's application of the TXU Operating System, a quality-driven lean manufacturing process that focuses on removing inefficiencies from all of the processes at Comanche Peak and its other power generation facilities.
- F. TXU Power is a member of the Nuclear Energy Institute (NEI) and fully supports NEI's detailed comments on the May 16<sup>th</sup> NOPR.

For coal gasification:

- A. TXU Generation Development intends to issue a request for proposals (RFP) to investigate the economic feasibility of coal-gasification technologies that are carbon-capture ready to meet the future load growth in ERCOT.
- B. The gasification RFP intends to investigate and develop those gasification technologies that will economically convert Powder River Basin, Texas lignite

and other fuels to synthetic natural gas that can be converted to electricity using gas-fired combined cycle technology.

- C. TXU Generation Development intends to apply its processes used in developing its other baseload generation assets to minimize fixed and variable costs associated with gasification technologies.
- D. If determined economically feasible, TXU Generation Development will develop and construct coal gasification power plants as a complementary baseload generation technology to its nuclear power assets.

### **Need for Federal Loan Guarantees for New Nuclear Generation**

TXU Generation Development believes that the DOE Title XVII Loan Guarantee Program is absolutely essential to kick start the construction of new nuclear plants in the US. As you are aware, since the Three Mile Island accident almost 30 years ago, no new nuclear plants have commenced development or construction in the United States. Since the passage of the Energy Policy Act in 2005 and the possibility of a federal loan guarantee program available to sponsors, about 20 companies have commenced plans and are spending significant capital in anticipation of using such a program.

The principal need for the Loan Guarantee Program is to reduce financial and regulatory risk to the sponsors and lenders of a nuclear project or alternative generating resources that reduce greenhouse gases. Our proposed new nuclear plant development will cost several billion dollars and thus represents a significant financial commitment with concomitant financial risk for our company. Many of the issues during the last round of nuclear plant-building were regulatory in nature, e.g., NRC mandated changes to project design and increased scrutiny on construction, causing massive delays. It's reasonable to expect that no company would take such substantial financial risks today without some assistance.

### **Some Comments Regarding the DOE Notice of Proposed Rulemaking (NOPR)**

Over the last 18 months, we have followed the progress of the Title XVII rulemaking and studied the interim guidelines issued in August 2006. As a member of the NEI, we contributed to the comments on the August 2006 interim guidelines in an NEI letter sent to your office in January 2007. We also urged five commercial lenders and investment banks who would be providing the capital for these projects to provide their input to DOE. They wrote a letter to Secretary Bodman in March 2007, and spoke with your office directly about the program. Unfortunately, we do not believe the interim guidelines outlined a program that would be workable in the capital marketplace and, despite the comments made to your office from sponsors and lenders to that effect, nothing has changed in the May 2007 NOPR. The program as outlined simply won't work without some significant revisions.

The following aspects of the Loan Guarantee Program need revision:

- I.     Percentage  
      Cover:           No more than 90% of the face value of the debt can be guaranteed.  
                              [609.10 (d)(3)]
- Comment:           This requirement creates a structurally subordinated tranche of debt which, when combined with no *pari passu* treatment and an inability to sell as a separate tranche discussed below, is a non-starter for lenders. Federally guaranteed debt and high-yield debt attract different buyers with different risk requirements. It would be highly unusual for one investor to desire both tranches, as the program requires.
- We are aware that other government programs allow 100% loan guarantees with a cap on the amount of debt. US Export-Import Bank and Overseas Private Investment Corporation are examples.
- II.    No *Pari passu*  
      Treatment:       The NOPR requires that the government have a first-lien position on all assets of the Project, including any additional collateral related to the project. [609.10 (d) (13)]
- Comment:           In the context of a limited recourse project financing where the lenders will be issuing loans guaranteed by the government, the lenders will require a first lien, regardless of the guarantee. If DOE makes partial or full buyout of the loans, the government would step into the shoes of the senior lenders (and have a first lien) to the extent of the buyout. If a DOE guarantee were to make several interest and principal payments during a rough patch in the project's life (which is the more likely scenario than a total buyout), DOE would become part of the lender's collateral pool (first lien) to the extent they have contributed funds and only to that extent. DOE can acceptably protect itself by allowing that guaranteed lenders may take a first lien position that is equal with or "*pari passu*" with other guaranteed lenders, such as creditors with secured liens in collateral acquired prior to the guarantee being issued
- III.   No Pro Rata  
      Syndication of  
      Debt:            The NOPR requires that the guaranteed portion of the debt cannot be separated from the non-guaranteed portion to be resold in the secondary market. [609.10 (d) (4)]

Comment: As stated above, the market for federally guaranteed debt is distinct from that of high-yield debt in the capital marketplace. The uncovered piece has a risk profile equivalent to equity; a buyer for both pieces may not exist for this hybrid investment. Selling off exposure is a lender's way of managing risk, and this requirement doesn't allow lenders to do so. This would also needlessly increase financing costs because the uncovered debt tranche would require an equity return.

IV. Appropriations

Risk: In order to enter into a guarantee, the DOE will have to have received authority in the appropriations act. [609.9 (c) (1)]

Comment: A sponsor needs to know up front if a guarantee will be available throughout the term of the debt. If a lender cannot be sure the federal guarantee covers the project loan for the entire loan term without risk of appropriations, the loan would not be made. A lender must be sure the guarantee will not be subject to political risk. DOE should adopt the position articulated by the Government Accountability Office and its General Counsel, who concluded that Title XVII authorizes DOE to guarantee loans in such amounts that it deems appropriate provided that borrowers fund the costs of issuing the guarantees. Rather, specific appropriations are only necessary where Congress chooses to fund the cost of the guarantees in an Appropriations Act.

V. Subsidy Cost Calculation:

NOPR is silent on the method of calculating the subsidy cost. The only requirement is that Office of Management and Budget review the calculation before the closing date. [609.9 (d) (3)]

Comment: This section of the NOPR seems to require the applicant (sponsor) to provide the calculation for the subsidy cost. There should be one fair and transparent base-line calculation provided by the DOE so that all sponsors will be able to calculate the cost of the guarantee up front. This cost should be in line with other loan-guarantee programs provided by the government. Moreover, calculation of the cost should take into account the specific risk profile for a project, such as the term of the loan being guaranteed, the quality of collateral, and the terms and conditions of contractual arrangements such as

vendor concessions and the warranties, liquidated damages, assurance and other provisions of engineering, procurement and construction contracts.

- VI. Credit Rating: A project sponsor must obtain at the application stage a preliminary credit assessment for the project without a loan guarantee from a recognized credit rating agency. [609.6 (b) (21)]

Comment: A rating provided by a nationally recognized rating agency is not going to add any value to the risk evaluation that must be undertaken by the lenders and the sponsors, particularly without a federal guarantee. This simply points out the need for the guarantee for newer technology. The DOE should retain the expertise necessary and appropriate to perform the credit assessments on each project. The costs of providing these risk assessments could be borne by the project in the application fee.

- VII. Non-Recourse: The NOPR requires the sponsor to pledge all the project assets and possibly other security to obtain a loan guarantee. [609.10 (d) (10)]

Comment: The DOE should clarify that the program requires assignment of only the project assets and any contract revenue streams, and perhaps also require that the guarantor be named loss payee on insurance proceeds. A sponsor may, at its discretion, offer other collateral to reduce the cost of the subsidy for example. This is the substance of the collateral pool that lenders would and will require in a limited-recourse financing. As stated before, the government would be in a second lien until it was to pay off, in part or in whole, the project loans – at which time they would subrogate to a first lien.

- VIII. Eligible Technologies: The NOPR suggests two definitions for a technology to be in “general use” which would be a disqualifying factor for a project applying for a loan guarantee. Alternative 1 would be a technology that had been ordered for, installed in or used in five or more projects in the US. Alternative 2 has the technology in operation in a commercial project in the US for a period of five years. [609.2 Definition of Commercial Technology]

Comment: Instead of using such a specific definition, the concept should remain flexible as banks are going to require tested technology which has demonstrated in some reasonable fashion that it is commercially viable, even if the debt is federally guaranteed. Lenders would be looking for a number of installations operating successfully for a number of years, preferably in the US. The decision concerning “general use” should be left up to the government, but consistently applied so applicants would know where they stand in the preliminary application process.

IX. New or  
Significantly  
Improved:

Although not specifically defined, the NOPR suggests a “new or significantly improved technology” as “only recently been discovered or learned” or that involves “meaningful and important improvements in the productivity or value of the technology.” [609.2 Definition of New and Significantly Improved Technology]

Comment: This concept seems to be a bit at odds with the “general use” definition above. A new or significantly improved project will have to have some history and a number of installations in order to attract debt financing, even with a DOE guarantee. We believe the industry would be comfortable with a very flexible definition and have the DOE (in conjunction with expert consultants) make a decision on the technology at the preliminary application stage.

X. Additional  
Issues:

Certain costs excluded from Project Costs. The NOPR proposes to exclude the subsidy cost as well as administrative and start-up fees from project costs.

Comment: It is a very acceptable practice in the project financing market to include these costs in total Project costs and make them eligible, at least in part, for the federal loan guarantee. Total project costs should include 100% of the costs to bring a plant into commercial operation, including all financing and start-up costs.

XI. Lender Issues:

Duty of Care. DOE must determine that the lender or other parties servicing the loan will exercise “a high level of care and diligence” [609.11 (b)]

Comment: Any lender providing debt capital to a project on a limited recourse basis would be performing an exhaustive due-diligence process, using appropriate expertise to analyze the risks. Thus, this DOE requirement of a specified duty of care seems unnecessarily duplicative. Moreover, any specific duties such as notice requirements, etc., should be assigned to an Administrative Agent or Lending Agent. Debt held by other lenders should be freely marketable without administrative burden on all lenders.

Audit. DOE will issue regulations pertaining to audit requirements. [609.17 (b)]

Comment: Audits and cost reviews could be going on all through the Application stage, but the final construction budget should be agreed upon by all parties prior to financial close. The lenders will have an Independent Engineer throughout the process. Once a financial close has occurred, the DOE should review the lender's monthly construction reports prepared by the Independent Engineer to determine if funds are being spent appropriately. The lenders will be watching construction very closely, again, regardless of the federal guarantee. The lender has the funds outstanding and is the party, along with equity, at risk. Thus, a duplicative DOE audit right/process seems unnecessary. To the extent that DOE retains audit rights, there cannot be any retroactive right to remove specific costs certified by the Independent Engineer and paid from the funds provided by guaranteed loans, except perhaps in the case of fraud by the lenders.

XII. Application  
Process:

The DOE NOPR describes a cumbersome five-step process. [609.3 (a)] The issue is a "Conditional Commitment" is not binding on the DOE or the Applicant well into the process after the sponsor has spent considerable funds and time. [609.8 (c)]

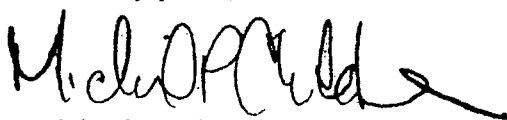
Comment: Although a sponsor seems to be moving through the process successfully, there still seems to be conditionality on the loan guarantee right up to the financial close. A Sponsor should provide a reasonably detailed Preliminary Application, but without the expensive reports and consulting work product that would be required at a later stage. Upon review by the DOE of the Preliminary Application, a determination would be made if the project meets the Loan Program criteria and the sponsor would be invited to submit a full-blown Application. Once the Sponsor submits the Application Package, the DOE should



issue a Conditional Commitment. The understanding should be that following the issuance of a "Conditional Commitment" by the DOE, as long as the sponsor provides all the paperwork and contracts required by the program, the federal loan guarantee would be forthcoming. The costs of securing a guarantee, providing all the necessary documents, licenses, permits, etc., could cost in the hundreds of millions in the case of a nuclear plant. Following the preliminary application stage, a sponsor should not have to be concerned about making these expenditures and not receiving a federal guarantee unless the sponsor fails to fulfill all the conditions precedent to the loan program.

In conclusion, I would like to thank the DOE for the opportunity to provide detailed comments regarding the Loan Guarantee Program and would urge you to review other government guarantee programs that have proven very successful in fulfilling the requirements of the law. In addition, I am sure that the commercial lenders you are meeting with would be willing to work with you to devise a program that would be acceptable to the wider capital markets and result in a successful implementation of Title XVII of the Energy Policy Act of 2005. We at TXU Generation Development would like to offer any assistance you may require to help reach the objective of a workable Loan Guarantee Program.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Michael P. Childers", with a stylized, flowing script.

Michael P. Childers  
CEO

TXU Generation Development Company, LLC

cc: A. Horton, SVP Treasurer, TXU  
J. Simmons, VP TXU  
D. Woodlan, TXU  
M. Lucas, TXU